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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

Case No. 4122

12 **CESAR RAFAEL MACIAS**

**FIRST AMENDED STATEMENT OF
ISSUES**

13 5405 Newtonia Dr., #B
14 Los Angeles, CA 90032

15 Pharmacy Technician Applicant

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 6, 2010, the Board of Pharmacy, Department of Consumer Affairs
22 ("Board") received an application for Registration as a Pharmacy Technician from Cesar Rafael
23 Macias ("Respondent"). On or about June 16, 2010, Cesar Rafael Macias certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.

25 The Board denied the application on April 28, 2011.

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JURISDICTION AND STATUTORY PROVISIONS

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b) of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 475 of the Code states, in pertinent part:

“(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

...

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

6. Section 480 of the Code states, in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.”

7. Section 4301 of the Code states, in pertinent part:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

...

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

...

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1770, states:

"For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Substantially Related Criminal Conviction)

9. Respondent's application is subject to denial under section 475, subdivision (a)(2) and section 480, subdivision (a)(1) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician applicant, as follows:

- 1 a. On or about March 18, 2010, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Penal Code section 459
3 [burglary], a misdemeanor, in the criminal proceeding entitled *The People of the*
4 *State of California vs. Cesar Rafael Macias* (Super. Ct. Los Angeles County,
5 2010, No. GA078863). The Court placed Respondent on probation for a period
6 of three (3) years, with terms and conditions. Additionally, the Court ordered
7 Respondent to complete 30 days of Cal-Trans and perform 200 hours of
8 community service.
- 9 b. The circumstances surrounding the conviction are that on or between
10 November 11, 2009 and December 12, 2009, while Respondent was employed at
11 J. C. Penny's Department Store in Arcadia, California, he unlawfully took money
12 from cash registers at J.C. Penny, his place of employment.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Act Involving Dishonesty, Fraud or Deceit)**

15 10. Respondent's application is subject to denial under section 475, subdivision (a)(3)
16 and section 480, subdivision (a)(2) of the Code in that Respondent committed an act involving
17 dishonesty, fraud or deceit with the intent to substantially benefit himself or another , or
18 substantially injure another when he stole money from three cash registers. Complainant refers
19 to, and by this reference incorporates the allegation set forth above in paragraph 10,
20 subparagraphs (a) and (b), inclusive, as though set forth fully herein.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 **(Conduct Warranting Discipline if Committed by Licentiate)**

23 11. Respondent's application is subject to denial under Code section 475, subdivision
24 (a)(4), section 480, subdivision (a)(3) and section 4301, subdivisions (f) and (l) on the grounds of
25 unprofessional conduct in that Respondent committed acts which, if done by one holding a
26 license would be grounds for discipline on that license. The circumstances are that Respondent
27 committed an act involving dishonesty, fraud or deceit when he stole money from three cash
28 registers. Furthermore, Respondent was convicted of burglary for his actions. Complainant

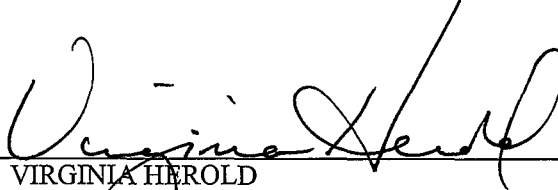
1 refers to, and by this reference incorporates the allegation set forth above in paragraph 10,
2 subparagraphs (a) and (b), inclusive, as though set forth fully herein.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board issue a decision:

- 6 1. Denying the application of Cesar Rafael Macias for a Pharmacy Technician License;
7 and
8 2. Taking such other and further action as deemed necessary and proper.

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10
11 DATED: 4/27/12


12 VIRGINIA HEROLD
13 Executive Officer
14 Board of Pharmacy
15 Department of Consumer Affairs
16 State of California
17 Complainant

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